

EPIC

4275 G

November 15, 1998

Bruce Halstead, US Fish & Wildlife Service
1125 16th Street, Room 209
Arcata, CA 95521
fax (707) 822-8411

John Munn
California Department of Forestry
1416 Ninth Street, Room 1516-4A
Sacramento, CA 95814
fax (916) 653-8957

**Re: Pacific Lumber Company's Proposed HCP/SYP and the Related EIR/EIS
Permit numbers PRT-828950 and 1157 and SYP 96-002**

Dear Messrs. Halstead and Munn,

I offer these comments on the Pacific Lumber Company's proposed Habitat Conservation Plan/Sustained Yield Plan on behalf of the Environmental Protection Information Center (EPIC), the Sierra Club and the plant and animal life that would suffer tremendous damage if it were approved. I work with EPIC in the review and monitoring of timber harvest plans (THPs) in southern Humboldt County, including those of Pacific Lumber Company, and have seen and read innumerable documents during the course of this work pertaining to this company's logging practices which document the problems, both broad and specific, they have caused and which present compelling evidence that this proposed plan would not comply with multiple laws. These documents and reports have great bearing and relevance to this proposed HCP/SYP and I have provided a sampling of them for your review and consideration.

Maximum Sustained Production

It is a well known fact that this company doubled and tripled their rate of logging and converted entirely to even-aged silviculture methods after Maxxam Corporation orchestrated a hostile takeover in the mid-80's. Since that time, PL has drastically shortened the time frame in which they subject an area to intensive logging and they now often log areas with a commercial thinning or similar type of method, then in to the area under salvage exemptions and then going in only a few short years later to log the remaining trees. In addition to being severely damaging to fish and wildlife, this increased rate of logging is incongruous with the laws set forth in the Forest Practice Rules (FPRs) regarding Maximum Sustained Production (MSP) and fails to meet the intent of Sustained Yield. Section 913.11(b)(4) states:

Where a SYP or NTMP is submitted for an ownership, an approved SYP or NTMP achieves MSP by providing sustainable harvest yields established by the

CE-
1

Environmental Protection Information Center

PO Box 397 Garberville, CA 95542

Phone: (707) 923-2931 Fax: (707) 923-4210 Email: epic@igc.org Web: <http://www.igc.org/epic/>

landowner which will support the production level of those high quality timber products the landowner selects while at the same time...balancing growth and harvest over time. The projected inventory resulting from harvesting over time shall be capable of sustaining the average annual yield achieved during the last decade of the planning horizon. The average annual projected yield over any rolling 10-year period, or over appropriately longer time periods for ownerships which project harvesting at intervals less frequently than once every ten years, shall not exceed the projected long-term sustained yield. A THP which relies upon and is found to be consistent with an approved SYP shall be deemed adequate to achieve MSP.

CE-
1
CON.

Many reports from CDF indicate this provision is not being met by this company under their current logging rates, and this is sure proof that it will not be met at the level proposed under this HCP/SYP. Under Article 6.75 of the FPRs, 1091.1(b) states, in part:

This Article carries out the Legislature's direction that the Board adopt regulations to assure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish and wildlife, and water resources in accordance with the policies of the Forest Practice Act (FPA). Those policies include creating and maintaining a system of timberland regulations and use which ensures that timberland productivity is maintained, enhanced and restored where feasible and the goal of maximum sustained production (MSP) of high-quality timber products is achieved while giving consideration to environmental and economic values...

This company has made it a habit in recent years to re-log areas which were logged only a few short years ago. Countless THPs were filed by PL for areas that were already logged only a few short years before, including 1-93-068, an area logged again under 1-95-566; 1-90-366, an area logged again under 1-97-046; 1-91-207, an area logged again under 1-96-522; THP 1-93-183, an area logged again under 1-97-269; and many others. This has had an adverse impact on many different factors, including economic and employment. Please describe how this proposed HCP/SYP "accounts for limits on productivity due to constraints imposed from consideration of...regional economic vitality (and) employment..." as described in 913.11(a)(1). Does it propose the most feasible alternatives in terms of economic vitality and/or employment? Does this proposed HCP/SYP set forth "an appropriate silvicultural system and regeneration method for the site" to restore, enhance and maintain the productivity of timberlands, as described in 913.10(a)(2)?

CE-
2

A report from THP 1-98-001, filed in January, 1998, provides a clear example of the problems pertaining to MSP that PL's rate of logging has caused and indicates that plans that comply with the proposed HCP/SYP provisions would not necessarily comply with the intent of MSP. In this report, the CDF Forester states:

CE-1
CON.

"The RPF has indicated that his project will comply with 14 CCR 913.11 (c). An SYP #96-002 has been submitted for this ownership. The RPF states that "Until the SYP is approved, this Option C timber harvest is designed to emulate the SYP conversion of uneven-age stands to evenage. By design, Option C plans which parallel the SYP contain protections to public trust resources that result in post operation on and off site conditions of insignificant levels of impact." (THP pages 4 and 5) The RPF's contention that insignificant levels of impact will result just because this plan is filed as in compliance with 14 CCR 913.11 (c) is questionable...It is the inspector's contention that this project, as proposed, does not meet the intent of maximum sustained production given the immediate re-entry into an area which was harvested within the last three years."

CE -
1
con.

"The RPF discloses recent harvests in the project area by stating that 'thinnings and selection harvests were conducted during the early 1990s' (THP pages 4 and 19). This statement is somewhat misleading. This project area was the subject of recent harvests under THPs 1-94-102 HUM and 1-94-376 HUM. These areas were both operated in 1995 and 1996 with completion reports filed in 1996 and 1997, respectively. The proposed re-entry into these areas is being considered with less than two years since completion of either of the two previous projects. The appropriateness of this proposed project is seriously in question...The clearcut entry into Unit 1 is inappropriate for several reasons. This treatment fails to meet the test of compliance with maximum sustained production of high quality timber products. The commercial thinning treatment has been applied, completed in September 1997. The stand has not been given the opportunity to respond to this treatment. Harvesting this stand prior to thinning response is not consistent with the objective of Maximum Sustained Production. This is also an issue with Units 2, 3, and 4..."

Regarding another area included in this same plan which was selectively logged in 1996 and which THP 1-98-001 proposes to log under a shelterwood removal step, the CDF Forester states:

"The previous entry was proposed and executed as a selection method and was successful in its stated intent. Application of this proposed treatment is not consistent with the previously applied silvicultural method. The RPF has explained change in silvicultural objective for this stand as an effort to emulate the SPY conversion to even-age management. this does not account for the new application so shortly following the previous entry. Applying this treatment appears to run contrary to standard principles of sound forestry and does not appear to comply with 14 CCR 913 (a)."

Similarly, in report from THP 1-98-154 the CDF Forester stated,

"The RPF has proposed a reentry into unit 1 to clearcut a four or five year old thinning. The stand was thinned to the minimums (ocular estimate only) during that entry. The stand has not had time to exhibit any appreciable increase in

growth rate or volume...The physiological systems of the trees have not had adequate time to respond to beneficial effects of the thinning process...In my opinion, the practice of re-entry for the purpose of a final harvest in an area commercially thinned only five years before does not conform to the standard silvicultural practices currently employed by the profession and retards MSP on a given site. The purpose of a commercial thin is to transfer growth from many stems to a fewer number by allowing the residual stand to "release" and occupy the available site and exploit the available light. This site has not had sufficient time to do this (reference 14 CCR 913 (a)).

CE-
1
CON.

As the CDF Forester points out in his report on THP 1-98-001, the THP "does not appear to be in compliance with 14 CCR 913 (a), 14 CCR 913.1 (a) (4), 14 CCR 913.1 (a) (1), 14 CCR 913.3 (a) (1), and 14 CCR 913.10. Further, this project appears to fall short of the direction of the intent of the Legislature as stated under PRC 4513. Based upon this analysis, none of the harvest units under this proposed project appear to comply with Maximum Sustained Production. Under 14 CCR 898.2 (g), the project is subject to denial by the Director." As this THP conforms with the provisions and standards set forth in the proposed SYP and those contained in the Agreement in Principle signed in February, 1998, it is clearly apparent that this proposed HCP/SYP would allow a vicious logging cycle that runs contrary to the laws governing MSP. As with THP 1-98-001, this proposed HCP/SYP would violate 14 CCR 913 (a), 14 CCR 913.1 (a) (4), 14 CCR 913.1 (a) (1), 14 CCR 913.3 (a) (1), and 14 CCR 913.10 and should be denied on these grounds.

Problems from Rate of Logging

In addition to relogging areas that were logged in the recent past, logging occurs at an alarming, relentless pace on that land subjected to PL's short-gain plans. For example, 1,109 acres of the 1,478 acres of the Bridge Creek drainage (tributary to Elk River), or about 90%, has been subjected to logging plans by PL in only the last five years. More than half of the McCready Gulch watershed, tributary to Freshwater Creek, has been logged in just the last five years, including more than 40% which has been clearcut in just the last five years. In the land near Grizzly Creek State Park, PL has had approval to log 414 acres in only the last year, and they currently have additional THPs totaling 609 acres for which approval is currently pending. Please see the enclosed charts which show the alarming number of acres under the footprint of a PL THP.

CE-
3

Besides the adverse effects this has had and would continue to have on MSP, this rate of logging for short-term gain has been at the heavy expense of our public trust resources as it poses severely damaging effects on water quality and habitat for fish and wildlife. These problems were recognized and documented many years ago, yet the rate of logging has only been maintained and/or intensified. In a report for THP 1-90-693 written in November, 1990, an official from Water Quality stated:

"The subject THP proposes to harvest 262 acres within the North Fork Elk River and South Branch North Fork Elk River watersheds. According to information

gathered at CDF Region One Headquarters this plan would effectively put the entire 2.09 square mile (SBNFER) watershed under approved THPs since 1985. The California Conservation Corps Technical Advisor recently completed a stream survey on SBNFER and found salmon and steelhead trout and recommended the stream for some restoration and enhancement work. It stands to reason that we as review team members should assure other agencies as well as the public that the plans we are approving are as protective of water quality as possible. I feel that approving an entire watershed for timber harvesting in such a short time from could impede stream restoration efforts. "

CE-
3

CON,

Logging rates have increased in both intensity and frequency in the North Fork Elk River watershed since this report. For example, the CDF Forester stated in his report on THP 1-97-489:

"The RPF provided a list of past, present and future projects within the assessment areas. Approximately eighty-one percent of the watershed assessment area has been approved for harvesting in the last ten years. Another five percent is in proposed projects. Approximately thirty-five percent of the assessment area will be in active harvesting including this project."

DFG also discussed the problems caused by intensive and frequent logging in the North Fork Elk River in their report on THP 1-98-038. This report states:

"The current conditions in McWhinney Creek are likely, in part, a function of the extensive harvest activity that has recently occurred in this drainage. Approximately 60 percent of the 845 acre drainage has been under the footprint of a THP since April of 1994... (McWhinney Creek) contains one of the three known remaining populations of cutthroat trout in the North Fork Elk River drainage. Given the current in-stream conditions, these populations appear at risk of extirpation from McWhinney Creek if this has not already happened.

"The high level of timber operations that have occurred in the proposed THP's planning watershed is characterized in the CDF inspector's PHI report for this plan (Scanlon 1998). The extent of timber operations that have occurred or are in the works in the McWhinney Creek drainage (up to 60 percent of the watershed) are described above. In addition, based on the recent practices of the landowner, there appears to be a reasonable expectation that the THP area stand will be entered again in the near future for the purposes of exemption or emergency harvest operations (c.f. discussion in the CDF inspector's PHI report under Section II, 2.1; Scanlon 1998). Even if these intermediate treatments were not to occur, much of the THP area stand would likely soon be available for regeneration harvest (e.g., clear-cutting) since the stand is very close to being beyond the restrictions placed by Section 913.1 (a), Title 14, CCR. The stand age currently ranges from 55 to 58 years; regeneration harvest can begin at age 60. Each harvest entry presents its own risk of adding to significant adverse cumulative effects, particularly if harvests occur in rapid succession."

In the report from THP 1-98-154, the CDF Forester stated:

"The RPF has proposed a reentry into unit 1 to clearcut a four or five year old thinning... This practice has been seen throughout this ownership. At first it was viewed as an anomaly or an occasional change of management goals based on a site specific condition. It now is occurring with such frequency that I view it as a pattern of practice. The cumulative effects of this rapid reentry scenario are a cause of concern in view of the downstream domestic and the unstable nature of much of the slope north of the Class I (Dean Creek)."

CE-
3
CON.

"The adverse effects of the thinning ("thinning stock") have certainly manifested themselves in this time frame. The effects on other resources (soil, water, aesthetics, habitat) will be compounded in an artificially short period of time"

In a report on THP 1-98-001, the CDF Forester states:

"Soil resources are adversely affected resulting in soil loss and a possible reduction in soil productivity from a recurrence in soil compaction. Fish and wildlife impacts are linked in part with water resources impacts. This area has been stabilizing after the most disturbance with increased sedimentation likely to result. Given the recent listing of Elk River as a Clean Water Act 303(d) sediment impaired waterbody, rapid re-entry onto the same acres is ill-advised. Watershed impacts are likely to have had an adverse effect on coho salmon habitat. A re-entry to these harvest areas so recently following completion cannot be considered an activity which is 'protecting' the public trust resources through the application of these rules."

Also related to the problems arising from this unsustainable rate of logging, a CDF Forester stated in a report regarding THP 1-97-261:

"The concentration of harvesting in watersheds which are coming into rotation age is a factor which is not discussed. Such widespread entry should heighten the awareness for minimizing the possible impacts from such operations."

John Marshall, Resource Manager of CDF at Region One Headquarters, also said of the same watershed (Freshwater Creek) subjected to 97-261 on September 23, 1997 at a meeting with Freshwater residents "there has to be a slow down in the amount of timber harvesting that we're seeing in the watershed"

A California State Parks and Recreation employee documented some of the damages that have occurred to the Grizzly Creek State Park as a result of increased logging rates in a report for THP 1-97-519:

"Since accelerated timber harvesting started around Grizzly Creek State Park in the 1980s we have observed clear and obvious aggravation of both Grizzly Creek

and the Van Duzen River. Our most popular swimming hole, just below the confluence of Grizzly Creek and the Van Duzen River, existed for decades prior to this timber harvesting. Now it is gone, filled in with sediment from logged slopes and roads, along with many other pools that used to exist in the two watercourses. As the creek and river widens we have lost trees which existed along the banks for 500 to 1000 years. Since geology, climate and other natural elements have remained roughly the same over this time period, it is obvious the cause of this aggravation leading to the killing of 800 year old trees (from river widening) and the pools filling in is a direct result of poor timber harvest practices, pre and post the Forest Practice Rules.

CE-
3
con.

"One need only look at an aerial photo of Grizzly Creek State Park to see that almost the entire area, including all the watersheds, has been heavily harvested in the recent past three decades... We have had the same personnel stationed at Grizzly Creek State Park for seventeen years who will testify to the loss of big trees and the filling in of pools caused by the sediment generated from logging ops in the Camp Bemis watershed and others. Last year alone Grizzly Creek aggraded 5 to 10 feet in the final reaches before emptying into the Van Duzen River... As channels widen and banks collapse we (and therefore the public) have lost hundreds of old growth trees in the last three decades to the filling in of the South Fork Eel, main stem Eel River and tributaries such as Jordan and Bear Creek."

Zero Net Discharge

CDF, along with Water Quality and DFG, have admitted that severe adverse cumulative impacts exist in the Bear Creek, Jordan Creek, Freshwater Creek, Stitz Creek, and Elk River watershed as a result of logging and associated activities. As a result of this determination, the agencies have implemented an informal policy that requires logging plans in these watersheds to aim to attain zero net discharge (ZND). ZND, however, is not sufficient to prevent further damage to the beneficial uses of water in these drainage or in many other drainages where impacts are just as severe, as this only maintains a degraded condition. Reports from various agencies have documented this fact and have indicated that a reduction in logging rates in these watersheds is appropriate and necessary. For example, in THP 1-97-463, the CDF Forester stated "The continuing harvest proposals in this degraded watershed are problematic and the Zero Net Discharge approach is not adequate to correct the problems which have become apparent." Elsewhere in this report, the CDF forester stated:

CE-
4

"The RPF has presented a Zero Net Discharge approach in this plan which is well intentioned as far as it goes. I believe that rehabilitation of the watershed is more appropriate, i.e. to do less than zero. To avoid all impacts where possible and to correct problem areas to allow natural stabilization to occur. This approach may not be possible given the continued level of planned activity in this watershed, but I believe it should be employed regardless. There is admittedly an increased level

of harvesting in this ownership as a result of a change in ownership and management goals; these goals may not be appropriate in degraded watersheds such as this. DFG recommends that no additional sediment producing impacts be permitted in this watershed and that no projects be permitted which impede recovery of this watershed (See letter to CDF page 222 bottom paragraph). This project proposes some offsetting mitigation but in terms of new road construction (without a demonstrable watershed wide plan) and use of readily available and less expensive harvest systems, it is simply 'business as usual.' This approach is no longer appropriate in this and similar watersheds.

CE-
4

"A dramatic reduction in the level of harvesting in degraded watersheds should be considered by the landowner as well as reviewing agencies. A quick calculation based on the tables provided in the THP indicate that approximately 38% of the assessment area has had a regeneration harvest in the last 10 years. This rate is not sustainable under current regulations. From my observations of the Bear Creek and Jordan Creek watersheds I believe that regeneration type harvesting has contributed to mass wasting events triggered by the storms of winter 96-97. My observations indicate the vast majority of events have occurred where regeneration harvests have taken place within the last 15 years. The fact that nearly 40% of the watershed has been regenerated within the last 10 years may have been a great factor in this perception.

The proposed HCP/SYP does not implement measures which would change the trend which has developed with this company in its logging rates and would only further the damage, or at best, maintain the current degraded condition these watersheds are experiencing.

Late Successional Forests

Pacific Lumber's classification of late successional forests (LSF) has been found completely inaccurate and is extremely unreliable. Many, many areas that quite obviously do not contain LSF attributes are classified as such, calling into question both the company's integrity as well as the validity of the information presented in this proposed HCP/SYP. The HCP/SYP relies on the same classification method that has been highly suspect and incorrect, and it is therefore probable that the percentages of LSF as well as the distribution of LSF reported in the HCP/SYP are merely wrong. Please explain how you have evaluated the validity and accuracy of the LSF classifications presented in the proposed plan. Please explain how you are able to determine potential significant adverse impacts if you cannot be assured that this numbers and information is correct.

CE-
5

One of many examples where misclassification of forest types has been found includes the area subjected to 1-97-159, located in the Elk River watershed. The company reported that LSF existed in that area, and the CDF Forester, as is frequently the case,

found this was false information upon a site inspection. The CDF Forester stated in his report:

"Problems continue to manifest regarding the late successional forest (LSF) in a given assessment area and the validity of the timber type to WHR class crosswalk. On page 83, WHR 5P and 5S classes are incorrectly shown as late seral. None of the plan area appeared typed into these two classes, making this a cumulative effects accuracy issue. The majority of the harvest area is also shown as LSF (52 acres) with WHR Class 6 disclosed as the primary WHR type (page 80). The inspector did not find the plan area to generally meet the WHR 5M, 5D or 6 classifications. Class 4D was the most common type observed. The general stand description (page 26) appears accurate and is not consistent with a WHR 6 classification. The RPF needs to reassess the WHR classification and the validity of the crosswalk for this assessment area."

In another example of misclassifying LSF, the CDF Forester stated, "The RPF has stated that this project will result in the harvest of 12 acres of LSF. It is uncertain to the inspector which part of this harvest area is LSF. The plan area does not appear to contain LSF..." (THP 1-97-261).

In addition to misclassifying LSF, PL has reduced the amount and distribution of LSF within all of their planning watersheds to a level which has caused undue harm to plant and animal species that live, feed and breed in such forests. An unfortunate example of this lies with THP 1-98-021, which is located in Bear River in an assessment area where only 3% to 4% LSF remains. Under the proposed HCP/SYP, PL proposes to leave only LSF forests within Class I and Class II buffers, a proposal which is devoid of scientific justification or reasoning. Many of these areas do not have the functional characteristics of LSF, such as with Bear River. This proposal would not only cause tremendous harm to LSF associated species that exist outside the stream buffer, but would also present a serious "bottle-neck" problem. Please see the PHI Report on THP 1-98-021 by the CDF Biologist for an extensive discussion on the problems that THPs such as this one, which would be permitted under this proposed HCP/SYP, would cause to our public trust resources.

We believe the current amount and distribution of LSF is having a serious adverse effect to many species, including the fisher, martin, pileated woodpecker, red tree vole, spotted owl, northwestern pond turtle, and various species of bats. Functional connectivity is not provided for species to migrate between areas of LSF, and this is placing a tremendous strain on these imperiled animals. Thus, the most feasible alternative for forest management on this ownership in this watershed is to "retain or recruit late and diverse seral stage habitat components for wildlife concentrated in the watercourse and lake zones and as appropriate to provide for functional connectivity between habitats," as described in 897(b)(1)(C) (emphasis added). As neither of these plans propose such a management strategy, they are out of line with the principles which are to guide you in determining whether a SYP meets the intent of the Forest Practice Act [897(b)], and therefore do not meet the intent of the FPRs.

CE -
5
CON.

Problems Related to High Volume of Roads

The percentage of each watershed on this company's land that is roaded is alarming. For example, "the existing road density in the Bridge Creek watershed (tributary to Elk River) is estimated at approximately 11.5 miles over the approximately 2.31 square mile Bridge Creek watershed... With the addition of the .75 miles of new road proposed in the plan (97-489), the total road density in the Bridge Creek watershed will be approximately 12.2 miles or the equivalent of approximately 5.28 miles of road per square mile" (PHI Report on THP 1-97-489, DFG, April 10, 1998).

CE-

6

In addition to the adverse effect this amount of roads has on growing areas, we are extremely concerned that this extremely high road density will further burden our public trust resources. Cederholm et al (1981) reported an increase in sedimentation when roads exceed 3% of the total basin area. Although the company does discuss minimal plans to abandon roads on their "ownership," the abandonment plan they employ does not recontour slopes and only minimally reduces the risk these roads pose in terms of sedimentation from mass wasting events and other factors. PL intends to construct many additional miles of new roads, which would further increase the roaded areas and the sediment which erodes into the streams.

Rare Plant Species

The information, or lack thereof, provided on rare plant species is completely deficient to determine the potential effects this proposed HCP/SYP would pose upon them. There is no indication that concerted efforts were made to locate and/or identify areas of potential habitat for such plant species as the calypso orchid and popcorn flower, Tracy's sanicle, Pleuropogon refractus Hooverianus, nodding semaphore grass, and Bensoniella oregana. Is there potential habitat for these plant species in the HCP/SYP area? Please describe how the information provided allows you to determine effects to these species. We believe this plan would irreparably harm rare plant species as recognized by Fish and Game, and should be denied pursuant to 898.2(e).

CE-

7

Unlisted Wildlife Species

This HCP/SYP, if approved, would further degrade habitat for many aquatic species in Humboldt County, the northwestern pond turtle, foothill yellow-legged frog, red-legged frog, tailed frog, and southern torrent salamander. The information provided in the plan, or lack thereof, does not allow for a true assessment of potential effects to these species. How can significant adverse impacts to these and other species be identified with the information contained in the HCP/SYP?

CE-

8

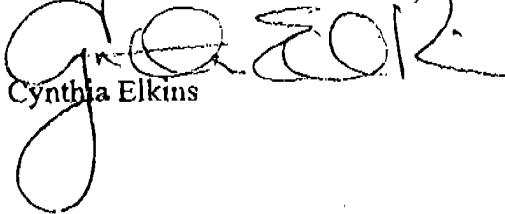
The proposed HCP/SYP also lacks sufficient information pertaining to the presence of migratory birds which could be affected, and as such is in violation of the Migratory Bird Treaty Act. Virtually no information on birds such as the Golden eagle, Bald eagle, Osprey, Cooper's Hawk, Sharp-shinned hawk, Peregrine falcon, Northern goshawk,

Purple martin, Vaux's swift is provided. Information on imperiled mammals, including the Mountain lion, Ringtail, Red tree vole, and White-footed vole is also lacking, and adequate mitigation measures for these species are not provided. How is it possible to determine the environmental effects or provide adequate protection to these species in the absence of such information? How do these plans comply with 919.4 and Technical Rule Addendum #2 ? What information do they provide that allows you to fully assess the impacts that may occur to these species if they are carried out? We hold these plans are inadequate to evaluate significant adverse environmental effects and that they meet the special condition requiring disapproval of a plan as defined in 898.2(c).

CE-
8
CON.

This letter only touches on a minor percentage of the huge problems this plan would impose upon fish and wildlife, among other things. This proposed plan is incongruous with the law designed to protect our beneficial uses of water and other public trust resources and does not set forth standards that meet the intent of MSP and sustained yield. We intend to take every effort to see that you uphold the law, and hope this can occur without involving the federal and/or state courts.

For All Life,


Cynthia Elkins

Attachments are included as a separate document.